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August 6, 2021

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Fabio Younes Arboleda and Armando Gomez
18 Cr 262 (VEC)

Hon. Valerie Caproni:

I am appointed under the Criminal Justice Act (CJA) as counsel for Fabio Simon Younes Arboleda, and Margaret Shalley is appointed as CJA counsel for Armando Gomez. Together we submit this letter to supplement the status update letter filed today by the United States Attorney's Office.

In order to provide effective assistance of counsel, the defense must:

- (1) Obtain and review accurate transcripts of the recordings in both English and Spanish;
- (2) Retain the services of an expert to determine whether the original source recordings are authentic and whether there is any basis to challenge their admissibility.

The discovery includes dozens of recordings of in-person meetings and telephone calls. Some of the recordings were made using surreptitious recording devices. Spanish is spoken in the meetings, some of which go on for hours. In most instances, the audio quality is poor because the meetings are conducted in public spaces such as hotel restaurants or cafes, with ambient background noise, cross conversations, or overlapping voices. The use of body wires for other recordings makes preparation of an accurate transcript especially challenging. Some communications occurred via text messages of WhatsApp. Although the Government has provided rough English partial translations of some of the meetings and calls, many do not have corresponding text in Spanish. The absence of corresponding text makes it difficult to direct the defendants' attention to specific lines or to check the overall accuracy of transcripts. For some recordings, the Government provided only a partial summary, not a transcript. In many

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instances, the person preparing the transcript or summary did not or could not identify the speakers. Some portions of the conversations are marked “unintelligible.”

The discovery includes court and law enforcement documents written in Spanish, and the Government has not yet indicated which documents they will translate or seek to introduce at trial. The discovery also includes interceptions of phone calls in Colombia. Without translations, it is unclear what documents may be admissible or pertinent for trial preparation.

At this point, the defense counsel has been unable to fully review the transcripts due to the lack of complete and finalized English and Spanish translations. Defense counsel cannot complete the task of creating accurate transcripts because of issues with voice identification and attribution.

In Colombia, there are allegations that the instant indictment is politically motivated and that Colombian law enforcement officers and prosecutors acted corruptly. Questions have been raised in Colombia about whether the recordings are authentic and whether tampering occurred. The defense anticipates making motions regarding authenticity, admissibility, and audibility of the recordings.

We have consulted with experts regarding the cost of testing for authenticity and tampering, and it is very expensive. Depending on the preliminary results, the costs could rise for further testing or testimony. Moreover, it would be costly to hire translators to prepare certified transcripts that would be admissible at trial. Those translators typically charge by the hour.

The United States Attorney’s Office provided additional transcripts yesterday, and the defense is reviewing them. Defense counsel is working closely with the United States Attorney’s Office to try to resolve these issues, and we will continue to talk in advance of the upcoming conference.

We respectfully request that Your Honor direct the Government to identify which recordings or documents will be introduced at trial. Also, we request a schedule for the Government to provide final transcripts of recordings and communications, containing both English and Spanish text and corresponding time stamps.

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Thank you for your courtesy and attention to this matter.

Sincerely,

/s/ 

Donald J. Yannella, Esq.

cc. Margaret Shalley, Esq.
Alan Nelson, Case Budgeting Attorney
AUSA Jason Richman
AUSA Kyle A. Wirshba